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**DATE:** January 24, 2008

**TO:** MA Organizations Offering Special Needs Plans (SNPs)

**FROM:** David A. Lewis  
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**SUBJECT:** Moratorium on Special Needs Plans (SNP)

We are pleased with the tremendous growth and interest in the Medicare Advantage program options. The number of MA offerings nation wide increased by nearly 1000 plans and Special Needs Plans account for more than a quarter of the growth. On December 29, 2007, the President signed into law the *Medicare, Medicaid, and SCHIP Extension Act of 2007*. This Act affects SNPs in three ways:

1. Section 108(a) of this Act extended the authorization for SNPs to December 31, 2009.
2. Section 108(b)(1) imposed a moratorium on the approval of SNP plans under the authority in section 231(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).
3. Section 108(b)(2) also precludes the enrollment of a beneficiary in *any* SNP in an area in which that SNP was not available for enrollment on January 1, 2008.

In essence, the legislation extends existing CMS approved SNPs through December 31, 2009, allowing these existing plans to continue enrollment in the areas the SNP currently serves, but puts a freeze on CMS approval of SNPs under the authority in section 231(d) of MMA after December 31<sup>st</sup>, 2007 and the offering of any SNP in an area where that SNP was not already offered as of January 1 of this year. MA Organizations may continue to offer existing CMS approved SNPs through December 31, 2009. CMS will monitor and provide technical assistance to MAs with SNPs in accordance with existing contracts, but will not approve any reconfiguration of SNP type, SNP subset, or SNP service area.

The following are examples of the types of modifications that will not be permitted:

- A SNP type cannot be changed or converted to another type of SNP.
  - For example, a severe or disabling chronic condition SNP cannot be changed or converted to a dual or institutional SNP, as that would be a different SNP that was not offered as of January 1, 2008.
- The CMS approved SNP type and subset cannot be changed or modified from the existing SNP for the same reason.
  - An "all dual-eligible" SNP cannot be changed to another SNP subset, i.e., full \$0 cost share, or other Medicaid subset.
  - An additional severe or disabling disease/illness cannot be added to a chronic condition SNP.

- An institutional SNP approved for serving individuals in an institution cannot expand the SNP to enroll individuals who are institutional certifiable and living in the community or visa versa.
- A SNP cannot be sub-divided or split into two or multiple SNPs, as the second SNP would not be a SNP accepting enrollees effective January 1, 2008.
  - A 2008 SNP plan benefit package (PBP) cannot be crosswalked to two or multiple PBPs for 2009.
- The SNP county service area cannot be expanded, since the SNP would not have accepted enrollees in the new area effective January 1, 2008.
  - For example, an MA has an approved service area which covers only a partial county. This MA has an approved SNP operating in its partial county service area. The MA subsequently files an SAE and is approved to serve the full county. The MA's SNP cannot be expanded to serve the full county.

The legislation does not preclude the MA from reducing the SNPs service area or terminating the SNP. MAs may exercise their right to terminate the SNPs as stipulated in their contractual agreement with CMS.

An approved SNP that was not open for enrollment on January 1, 2008 cannot enroll Medicare beneficiaries during the period January 1, 2008 through December 31, 2009. However, the MA may enroll these individuals into their non-SNP MA plans.

During the initial implementation of SNP authority, CMS, as requested on a case-by-case basis, redesignated some MA plans that had SNP characteristics into SNPs. However, now that SNP authority has been in place for some time, CMS will not redesignate existing MA plans as SNPs if or when the moratorium is lifted. Additionally, given the existence of SNPs, and the moratorium on new SNPs, non-SNPs should not be targeting its marketing strategies to a SNP population.

Applicants who submitted a Notice of Intent (NOI) to file a MA application and were planning to **exclusively offer SNP(s) and no other MA plan(s)** for contract year 2009 should contact CMS to withdraw the NOI, as a SNP cannot accept enrollees during the moratorium period in any area in which it was not accepting enrollees effective January 1, 2008. Please send an email to Kateisha Martin at [kateisha.martin@cms.hhs.gov](mailto:kateisha.martin@cms.hhs.gov) to withdraw your NOI request, and state that the NOI is being withdrawn because of the SNP moratorium.

To further clarify the impact of the moratorium, we have developed a series of questions and answers that address the ramifications of the statute for existing SNPs. The moratorium restricts plan expansion as well as enrollment expansion. Please review the attached question and answer set.

## Attachment

### 1. Question

We have an approved chronic condition SNP plan that covers diabetes, chronic heart failure, chronic pulmonary obstructive disease, and depression. We also want to cover stroke and coronary artery disease since many of our beneficiaries have these conditions. Can we add these two chronic conditions to our existing SNP?

### Answer

**NO.** Adding chronic condition (CC) SNP plans for stroke and coronary artery disease would be a “new” SNP that was not available to enrollees effective January 1, 2008. Section 108(b)(2) of the *Medicare, Medicaid, and SCHIP Extension Act of 2007* **prohibits** enrollment of individuals in a SNP that was not already offered in the area effective January 1, 2008. You may continue to enroll members in the diabetes, chronic heart failure, chronic pulmonary obstructive disease, and depression CC SNPs that were approved prior to January 1, 2008.

### 2. Question

We have an approved chronic condition SNP for diabetes. Can we convert this existing SNP to a dual eligible SNP covering the exact same service area since the plan and service area were approved prior to January 1, 2008?

### Answer

**NO.** Again, that would be a new SNP that was not offered effective January 1, 2008. You may continue to enroll members in the approved diabetes chronic condition SNP if they reside in the service area approved prior to January 1, 2008.

### 3. Question

We have an approved all-duals SNP, and after lengthy negotiations with the state, have just reached an agreement to cover a Medicaid subset for a frail/disabled population. Can we convert from the all-duals to a frail/disabled subset to better coordinate with the state to serve these needy members?

### Answer

**NO.** Initiating a new “**subset**” of dual-eligible SNPs is equivalent to creating a new SNP that was not offered effective January 1, 2008. However, you may continue to enroll members in your dual-eligible SNPs if they reside in the approved service area.

### 4. Question

We have an approved institutionalized SNP plan and recently entered a contractual relationship with an assisted living facility that would enable us to offer our beneficiaries who qualify for institutionalization the option of living in the community with appropriate supportive services. Can we submit an addendum to our approved institutional SNP that allows our eligible beneficiaries to choose the community living option?

### Answer

**NO.** This would be a new SNP that was not offered effective January 1, 2008.

**5. Question**

We currently have a Medicare Advantage Organization that encompasses several types of SNPs (five chronic care SNPs, seven dual-eligible SNPs, four institutionalized SNPs including one for beneficiaries who qualify for institutionalization but are living in the community) and includes beneficiaries in several service areas. We are reorganizing our corporate structure. Can we restructure our PBP into several PBPs having the same SNP types and same service areas previously approved in the single PBP?

**Answer**

**NO.** The newly created Stand-alone SNPs would be SNPs that were not available for enrollment effective January 1, 2008. You may continue to enroll members using your existing PBP that was open to enrollment prior to January 1, 2008.

**6. Question**

We currently have a SNP that is approved to cover a partial area of county X. In 2007, we applied for, and CMS approved, a service area extension (SAE) to cover the entire county when marketing our MA products. Can we also expand the approved SNP to cover that entire county?

**Answer**

**NO.** Section 108(b)(2) of the *Medicare, Medicaid, and SCHIP Extension Act of 2007* explicitly **prohibits** any **service area expansion**, i.e., the enrollment of any individual residing in an area that was not “available for enrollment for individuals residing in that area on January 1, 2008.” You may continue to enroll beneficiaries in the partial county area you were covering as of January 1, 2008, but you cannot enroll members who reside outside the partial county area for which you had prior approval.

**7. Question**

Our company is opening a new branch in a neighboring state which does not presently offer any specialized MA plans for special needs individuals. Our marketing research indicated a high volume of special needs individuals reside in the service area that will be covered. Can we apply our approved SNP plan to the significantly needy individuals in the new service area?

**Answer**

**NO.** The above-referenced statute specifically prohibits any expansion of service area for approved SNP plans. You may continue to enroll members residing in the approved SNP service area. The mandated moratorium extends from January 1, 2008 to December 31, 2009.

**8. Question**

We currently have an approved chronic condition SNP for end-stage renal disease (ESRD). Although we have contracted with a dialysis facility to serve our beneficiaries, we want to contract with additional dialysis centers as we enroll more eligible ESRD beneficiaries. Can we expand the number of contracted dialysis facilities?

**Answer**

**YES.** The above-referenced statute does not prohibit the expansion of contracted facilities to serve your eligible beneficiaries provided your CC SNP for end-stage renal disease and your service area are not altered from what CMS approved prior to January 1, 2008.

**9. Question**

We presently have an institutional SNP approved to serve 20 counties in state X. As we enroll more frail/disabled and elderly beneficiaries needing skilled nursing care, we have found that our existing provider network is inadequate to meet the needs of our beneficiaries. Can we expand our existing provider network?

**Answer**

**YES.** The above-referenced statute does not prohibit the expansion of resources within your service area necessary to serve enrolled beneficiaries. However, the statute does prohibit the expansion of your service area, the enrollment of beneficiaries who reside outside your approved service area, and the transformation of your institutional SNP into any other type or subset not approved prior to January 1, 2008.

**10. Question**

We have a chronic condition SNP for psychiatric conditions (depression, schizophrenia, bipolar disorder, and chronic alcohol and other drugs addiction) that was approved in late fall 2007. Can we submit a Pre-enrollment Qualification Assessment Tool to facilitate enrollment in these SNPs?

**Answer**

**YES.** You may submit for CMS review a Pre-enrollment Qualification Assessment Tool to facilitate enrollment of beneficiaries in chronic condition SNPs approved prior to January 1, 2008 and covering the exact service area identified in the approved SNPs. Guidance related to the review process for CMS approval of your tool is found in the 2009 Call Letter.

**11. Question**

In collecting our quality assurance data, our analysis shows that many of our beneficiaries have multiple chronic conditions and would benefit from an MA plan that has a disease management model of care similar to a SNP. Since new types of chronic condition SNPs cannot be approved for 2009, can we develop and market a MA plan in our service area to beneficiaries who fit the profile of individuals with severe or disabling chronic conditions? Of course the MA plan would be open to all Medicare beneficiaries.

**Answer**

No. MAs should not develop MA plans that target SNP type Medicare beneficiaries. CMS believes this type of MA plan would be inconsistent with the spirit and intent of the moratorium. CMS does not intend to redesignate any type of existing MA plans to SNPs if or when the moratorium is lifted.

In summary, the moratorium freezes SNPs plan within the types, subsets, and service areas approved prior to January 1, 2008, but does permit continuing enrollment in existing SNPs through December 31, 2009.